

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

JOHN M. MARTOCCIA

CASE NO. 94-62983

Debtor

BRENDA SEARS MARTOCCIA

Plaintiff

vs.

ADV. PRO. NO. 95-70028

JOHN M. MARTOCCIA

Defendant

MEMORANDUM-DECISION AND ORDER

The "Plaintiff", Brenda Sears Martoccia, commenced the within adversary proceeding by the filing of a complaint on February 2, 1995, seeking to determine the dischargeability of a debt under §523(a)(5) and (15) as well as §727(a)(3)(4)(5) and (7) of the Bankruptcy Code (11 U.S.C. §§101-1330)("Code") in the voluntary Chapter 7 case commenced by John M. Martoccia, the "Debtor/Defendant" herein. The matter of instant concern deals with the Plaintiff's demand for a jury trial.

JURISDICTIONAL STATEMENT

The Court has jurisdiction over the parties and subject matter of this core proceeding pursuant to 28 U.S.C. §§1334 and 157(a), 157(b)(1), (b)(2)(A) and (B).

DISCUSSION

The Seventh Amendment preserves the right to trial by jury for suits at common law, but does not apply to suits in equity. See Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 109 S.Ct. 2782, 2790 (1989); Germain v. Connecticut Nat'l Bank, 988 F.2d 1323, 1328 (2d Cir. 1993) (citing Parsons v. Bedford, 28 U.S. (3 Pet.) 433, 446-47 (1830)).

The test for determining whether a party is entitled to a trial by jury requires a court to "determine first whether the action would have been deemed legal or equitable in 18th century England [prior to the merger of the courts of law and equity], and second whether the remedy sought is legal or equitable in nature. The court must balance the two, giving greater weight to the latter." Germain v. Connecticut Nat'l Bank, *supra*, at 1328 (citing Granfinanciera, *supra*, 109 S.Ct. at 2790); In re Perry, 111 B.R. 861, 863 (Bankr. C.D.Cal. 1990).

Because dischargeability proceedings and objections to discharge are characteristically equitable in nature, see Germain v. Connecticut Nat'l Bank, *supra*, at 1330; In re Schmid, 54 B.R. 520, 521 (Bankr. E.D.Pa. 1985) (citing Local Loan v. Hunt, 292 U.S. 234, 55 S.Ct. 695 (1934)), the Plaintiff is not entitled to a jury trial on the within complaint. See In re Devitt, 126 B.R. 212, 215 (Bankr. D.Md. 1991) (citing In re Perry, *supra*, 111 B.R. 861 and In re Hooper, 112 B.R. 1009 (9th Cir. BAP 1990)); In re Fineberg, 170 B.R. 276, 280 (E.D.Pa. 1994). Accordingly, Plaintiff's demand for same is hereby denied.

IT IS SO ORDERED

Dated at Utica, New York

this day of 1995

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge